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RECORDATION NO. _____ FILED
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August 1, 1988

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INTERSTATE COMMERCE COMMISSION

Istel Rail Corporation
55 Francisco Street
San Francisco, California 94133
(415) 984-4000

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Amendment No. 1 to Lease Agreement dated as of June 6, 1980, between The Ferdinand and Huntingburg Railroad Company, as assignee of the Louisville, New Albany and Corydon Railroad Company, and Modesto Empire and Traction Company (Lease attached)

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Amendment under a new recordation number.

The parties to the aforementioned instrument are listed below:

The Ferdinand and Huntingburg Railroad Company (Lessor)
55 Francisco Street
San Francisco, California 94133

Modesto Empire and Traction Company (Lessee)
530 Eleventh Street
Modesto, California 95353

This Amendment covers eighty-eight (88) 70-ton, RBL boxcars bearing reporting marks LNAC 5225-5344 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Department

PS:
Enclosures

1 5770
RECORDATION NO. 5770

AUG 5 1988-3 24 PM LOT NO. 1474-00

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 1

06/24/88

AMENDMENT NO. 1 (the "Amendment") to the Lease dated as of June 6, 1980 (the "Lease"), between Louisville, New Albany and Corydon Railroad Company ("LNAC") and Modesto Empire and Traction Company ("M&ET") is made as of this 8th day of July, 1988, by and between The Ferdinand and Huntingburg Railroad Company, as assignee of LNAC, ("Lessor"), and M&ET ("Lessee").

RECITALS:

- A. Lessor and Lessee are parties to the Lease pursuant to which eighty-nine (89) used RBL boxcars (the "Cars") have been leased to Lessee.
- B. Lessor and Lessee desire to amend the Lease as to the Cars and to any and all additional Cars described in each Schedule as now or hereafter added to the Lease.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree to amend the Lease as follows:

- 1. All terms defined in the Lease shall have the meanings defined therein when used in this Amendment.
- 2. This Amendment shall become effective upon its full execution.
- 3. Section 1. is hereby deleted in its entirety and replaced by the following:

"1. Lease of Cars.

- A. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, upon the terms and conditions set forth herein, a number of items of equipment of the reporting marks, type, construction and other description set forth in any lease schedules attached hereto and executed by the parties concurrently herewith or hereafter. The word 'Schedule' as used herein includes Schedule 1 as amended herewith and any additional Schedules and amendments to the Lease, each of which when signed by both parties shall be a part of this Lease. The scheduled items of equipment are hereinafter called collectively the 'Cars' and individually a 'Car'. The terms and provisions of each Schedule shall control, as to the Cars listed on such Schedule, over any inconsistent or contrary terms and provisions in the body of this Lease.
- B. The Cars covered by this Lease are those which shall be delivered to and accepted by or on behalf of Lessee pursuant to the terms hereof. This Lease shall become effective with respect to any Car as of the date of delivery and acceptance hereunder and shall continue with respect to such Car until

delivery of possession to Lessor. Lessor shall deliver Cars, at Lessor's expense, to the delivery point specified in the Schedule covering such Cars.

- C. It is the intent of the parties to this Lease that Lessor shall at all times be and remain the owner and Lessor of all Cars and that no joint venture or partnership is being created. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and will take such action and execute such documents as may be necessary to accomplish this intent."

- 4. Section 2. is hereby deleted in its entirety and replaced with the following:

"2. Rent

- A. During the term of this Lease, Lessee shall pay to Lessor for each Car, commencing on the date of delivery thereof, the monthly rental specified in the applicable Schedule.
- B. Unless otherwise specified in the applicable Schedule hereto, rental payments shall not abate if any Car is out of service for any reason whatsoever, including Repair Work.
- C. In the event destruction or damage beyond repair of a Car has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Car ('Casualty Car') will be removed from the rental calculations of this Lease on the date car hire ceases as set forth in the aforementioned Rules 7 and 8.
- D. If any Car, while in the possession of Lessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ('DV') for such Car ('Casualty Car'), Lessee shall notify Lessor of the occurrence of such damage as set forth in the AAR Interchange Rules. If Lessee fails to notify Lessor within sixty (60) days of the damage date, Lessor has the right to engage an independent appraiser to inspect such Car to determine the extent of such damage and such Car shall remain subject to the terms of this Lease, including the rental terms, until the date on which Lessor receives all amounts due to it hereunder. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Car within thirty (30) days of receipt of an invoice from Lessor.
- E. Lessor may, at its expense, replace any Casualty Car with similar equipment ('Replacement Car') upon prior written notice from Lessor to Lessee.

- F. Lessee shall not enter into any agreement with any other party with respect to the Cars ('Third Party Agreement(s)') without Lessor's prior written approval.
 - G. Lessor and Lessee agree to cooperate with and to assist each other in any manner reasonably requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Cars, provided, however, that this shall not affect their respective obligations under this Section 2."
5. Section 5. is hereby deleted in its entirety and replaced by the following:

"5. Use-Lettering.

Throughout the term of the Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from and after delivery of such Car and shall use each such Car on its own property or lines or in the usual interchange of traffic; provided, however, that:

- A. Lessee covenants that it shall abide by the Association of American Railroads ('AAR') interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ('Interchange Rules') for the duration of this Lease.
- B. Lessee shall give preference to and shall load the Cars prior to loading similar railroad cars leased from other parties subsequent to the date of this Lease or purchased by Lessee subsequent to the date of this Lease or interchanged with other railroads, provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request to shippers on its railroad tracks, and, provided further, that Lessee shall not have to provide the Cars priority at the expense of unreasonably disrupting Lessee's normal operations.
- C. During the term of this Lease, Lessor may, at its expense, replace any or all Cars with similar equipment upon prior written notice from Lessor to Lessee.
- D. Lessee agrees that the Cars shall at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same are operated and in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, and in accordance with all rules established

by the AAR, except that either Lessor or Lessee may by appropriate proceedings timely instituted and diligently conducted, contest the application of any such act, rule, regulation or order at the expense of the contesting party.

- E. At Lessor's election Cars may be marked to indicate the rights of Lessor, or an assignee, mortgagee, trustee, pledgee or security holder of Lessor or a lessor to Lessor. Except for renewal and maintenance of the aforesaid markings, no lettering or marking shall be placed upon any of the Cars by Lessee. Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction or consent of Lessor. Lessee shall be responsible for all costs associated with any marking changes made at its request and approved in writing by Lessor.
- F. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim arising by, through or under it, on or with respect to the Cars or any interest therein, of the revenues earned thereby, or in this Lease or Schedule thereto, except those created for the benefit of Lessor or any owner or secured party referred to in Subsection 11.(b) hereinbelow. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security, interest, or claim if the same shall arise at any time. If Lessee fails to take action as described in the previous sentence, Lessor may, at Lessee's expense, take such action and Lessee shall pay such cost within ten (10) days of receiving an invoice from Lessor for such expense."

- 6. Section 6. is hereby deleted in its entirety and replaced by the following:

"6. Repair Work.

- A. Lessor shall, at its expense, perform or have performed all inspections of, maintenance and repairs to, and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the AAR Interchange Rules; provided, however, that such repairs, maintenance and servicing ('Maintenance') shall be performed at Lessee's expense in the event (i) it was occasioned by the fault of Lessee, (ii) such Maintenance results from loading, unloading or use other than permitted under this Lease, (iii) such Maintenance is to repair, replace or maintain interior lading equipment, special interiors and linings or removable parts, (iv) such Maintenance relates to damage resulting from any commodity or material loaded in any Car or (v) such

Maintenance arises in those instances in which the AAR Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such Maintenance. Lessee shall be responsible for any transportation costs incurred by the movement of the Cars for any Maintenance as defined in (i), (ii), (iii), (iv), and (v) of this Subsection. Lessee shall, at its expense, inspect all Cars interchanged to Lessee to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange. Lessee shall use its best efforts to minimize any damage to the Cars and shall notify Lessor in writing of any Maintenance required. Lessee shall not place any Car into a private contract repair facility or have any Car repaired by a private contractor on Lessee's property unless Lessee has received prior approval from Lessor and all such repairs are performed under the direction and control of Lessor.

- B. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition as specified in the AAR Interchange Rules. Lessee may only make running repairs to those parts of the Cars specified in Exhibit A, attached hereto, to facilitate continued immediate use of each Car, but shall not otherwise make any repairs, alterations, improvements, or additions to any Car without Lessor's prior written consent. If repairs are necessary to any Car beyond such running repairs, Lessee shall promptly notify Lessor. In no event shall Lessee place such Car into a private contract repair facility, or allow a private contractor to perform repairs to such Car on the property of Lessee, unless such repairs are being performed at the direction and control of Lessor. Lessee shall be liable to Lessor for any revenues lost due to any unauthorized repair, alterations, improvement or addition. Title to such alteration, improvement or addition made, whether or not authorized, shall be and remain with Lessor. Should the AAR Mechanical Department inspect or investigate Lessee's facilities and determine that restitution is due owners of boxcars repaired at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all boxcars owned or managed by Lessor, including the Cars, that were repaired at Lessee's facilities. Lessor shall have the right to perform certain Non-Routine Repairs, as hereinafter defined, to the Cars at a location on Lessee's property which is mutually agreeable to Lessor and Lessee or at an independent repair facility. Non-Routine Repairs ('Non-Routine Repairs') shall be defined as repairs of a type that Lessor determines Lessee would not normally perform or of a type that Lessor determines would normally precipitate movement of such Cars to a repair facility. Lessor shall

notify Lessee at least twenty-four (24) hours in advance of performing such Non-Routine Repairs."

7. Section 7. (Casualty Car) is hereby deleted in its entirety and replaced by the following:

"7. Insurance.

* or control

Lessee shall be responsible for the Cars: (i) while in Lessee's possession* ~~care, custody or control~~; and (ii) in the same manner and under the same circumstances that Lessee is responsible under the Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained: (i) all-risk (except earthquake and flood) insurance with respect to the Cars while on Lessee's tracks or in Lessee's possession* ~~care, custody or control~~; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as agreed to by Lessor and Lessee. It is understood between the parties that the above referenced coverage shall be subject to Lessee's self-insured retention or deductible on its insurance program. All insurance shall be taken out in the name of Lessee and shall name Lessor, any financing party designated by Lessor by written notice to Lessee ('Financing Party') and any assignee of Lessor as additional insureds and shall also list Lessor, Financing Party and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that the insurance companies will endeavor to send written notice through Lessor to Financing Party and any assignee of Lessor of any material changes in coverage or cancellation thereof. In the event that Lessee fails to place insurance, or said insurance expires, Lessor has the right to purchase insurance to protect all interested parties and Lessee shall pay the cost thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ('Other Insurance') effected by, or for, the additional insureds. Any and all deductibles or self-insured retention in the described policies shall be paid by Lessee.

Each policy obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth by reference on the Certificate of Insurance provided to Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance."

8. Section 9. is hereby deleted in its entirety and replaced by the following:

"9. Taxes.

Lessor agrees to reimburse Lessee, within thirty (30) days from Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by the Lessee resulting from: 1) ad valorem tax assessments on the Cars; and 2) any assessment, levy or impost relating to each Car, the Lease or the delivery of the Cars which remained unpaid as of the date of the delivery of the cars to Lessee or which are assessed, levied or imposed during the term of this Lease, except taxes on income imposed on Lessee, gross receipts or sales or use tax imposed on the mileage charges and car hire revenue or sale or lease of the Cars. Lessor and Lessee will comply with all state and local law requiring filing of ad valorem tax returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax billings associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest."

9. Section 10. is hereby delated in its entirety and replaced by the following:

"10. Termination

This Lease shall terminate upon expiration of its term, at election of either party hereto by reason of the default or breach of the other party in the terms hereof, or upon the election of Lessor as set forth in each Schedule. In the event of a default or breach by either party, the other party may elect to terminate this Lease with respect to all or less than all of the Cars. Lessee shall, if the Lease is terminated with respect to any Cars, upon such termination return such Cars to Lessor in the same or better condition, order and repair (except as to Casualty Cars) as when the Cars were delivered to Lessee, ordinary wear excepted. Upon the termination of this Lease with respect to any or all Cars, Lessee shall return the Cars so terminated to Lessor free from all accumulations or deposits from commodities transported in or on the Cars. Condition at termination will be established at a joint inspection by Lessor and Lessee at a mutually agreeable time. Lessee shall return the terminated Cars to Lessor either (a) at an interchange point on Lessee's lines designated by Lessor or (b) if Lessee secures a final load for any Car, to a point as near as possible to a point or points designated by Lessor not later than thirty (30) days prior to the termination of the term hereof, in which case, Lessee is not responsible for accumulations or deposits as a result of any final load. If requested by Lessor, Lessee

shall provide free storage, in a secure location, for a period of up to thirty (30) days for Cars as to which the Lease is terminated, provided that risk of loss during such storage shall be Lessor's. This Lease may be terminated as to all Cars or as to any group of Cars covered by a Schedule without termination of the Lease as to Cars covered by any other Schedule. From and after termination of this Lease with respect to any Car, until such Car is returned to Lessor, all amounts earned by such Car shall be paid to Lessor as additional rental for use of the Cars during the term hereof and Lessor shall pay all costs and expenses on account of transportation or movement of the Cars."

10. Subsection 11.(b) is hereby deleted in its entirety and replaced by the following:

"11.(b) Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement pursuant to which Lessor's obligations thereunder are or become secured by the Cars. Accordingly, following notice to Lessee from any such secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Lease), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party."

11. Section 12. is hereby deleted in its entirety and is replaced by the following:

"12. Default.

- A. The occurrence of any of the following events shall be an event of default:

- (i) The nonpayment by Lessee of any sum required herein to be paid by it within ten (10) days after the date that such payment is due;
- (ii) The breach by Lessee of any other term, covenant, or condition of this Lease, which is not cured within ten (10) days after receipt of notice from Lessor or awareness by Lessee of such breach;
- (iii) The filing by or against Lessee of any petition or the initiation by or against Lessee of any proceeding: a) for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder; or b) under any bankruptcy, reorganization, receivership, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors,

compositions of indebtedness, or extensions of indebtedness.

- (iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.
- (v) Any action by Lessee to discontinue rail service on all or a portion of its track or to abandon any of its rail properties.

B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law, which will be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, rights and remedies hereunder), Lessor may, at its option, terminate this Lease and/or may:

- (i) Proceed by any lawful means to enforce performance by Lessee of this Lease or to recover damages for a breach thereof, and/or
- (ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessee shall, if directed by Lessor, unload the Cars within a reasonable time from such direction and deliver the Cars within thirty (30) days thereafter to Lessor at an interchange point or points on Lessee's lines designated by Lessor, and Lessor shall henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall, in addition, have the right to recover from Lessee any and all rental amounts which under the terms of this Lease may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorneys' fees incurred in securing such enforcement hereof."

12. Section 13. (Definitions) is hereby deleted in its entirety and replaced by the following:

"13. Storage

In the event that any Car(s) is not in use while subject to this Lease, such Car(s) shall be stored on Lessee's lines unless there is no room on Lessee's lines to store such Car(s). Lessee shall be

responsible for all costs associated with storing such Car(s), and shall reimburse Lessor within ten (10) days after receiving an invoice from Lessor if Lessor pays for any storage related costs.

13. Subsection 14.(e) is hereby deleted in its entirety and replaced by the following:

"14(e) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee such that Lessee's ability to perform its obligations hereunder would be materially and adversely affected."

14. Subsection 14.(f) is hereby added to the Lease.

"14(f) There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligation under this Lease."

15. Section 15. is hereby replaced by the following:

"15. Inspection.

Lessor shall have the right at any time during normal business hours, upon forty-eight (48) hours prior notice to Lessee, to enter any premises where the Cars may be located for the purpose of inspecting and examining the Cars."

16. A new Section 16. is hereby added as follows:

"16. Term

This Lease shall remain in full force until it is terminated as to all of the Cars as provided herein. The initial term ('Initial Term') and any extended term(s) ('Extended Term(s)') of this Lease, with respect to the Car(s) listed on each Schedule attached to the Lease shall be as set forth on such Schedule."

17. A new Section 17. is hereby added as follows:

*17. Miscellaneous

- A. This Lease and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, to the extent provided herein.
 - B. Both parties agree to execute the documents appropriate to this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Lease and Schedules hereto and to confirm or further the subordination provisions contained in Section 11 of this Lease.
 - C. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to such party, nor shall any waiver or indulgence by such party or any partial or single exercise of any right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
 - D. This Lease shall be governed by and construed according to the laws of the State of California; provided, however, that any remedies herein provided which are valid under the law of the jurisdiction where proceedings for the enforcement hereof shall be taken shall not be affected by any invalidity thereof under the laws of the State of California.
 - E. All notices hereunder shall be in writing and shall be deemed given 1) when delivered personally or 2) when received in the United States mail, postage prepaid, certified or registered, or 3) when transmitted and received by telex, addressed to the president of the other party or addressed to the individual designated in writing by the other party at the address set forth herein or at such other address as to which any party shall notify the other party.
- LESSOR: 55 Francisco Street, 5th Floor
San Francisco, CA 94133
- LESSEE: 530 Eleventh Street
Modesto, CA 95353
- F. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or early termination of this Lease.
 - G. This Lease represents the entire Lease. This Lease shall not be modified, altered, or amended, except by an agreement in writing signed by the parties.

H. This Lease may be executed in multiple counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument."

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 as of the date first above written.

FERDINAND AND HUNTINGBURG
RAILROAD COMPANY

By: W. J. Henrican

Title: President

Date: 7/8/88

MODESTO EMPIRE AND
TRACTION COMPANY

By: James Z. Beard

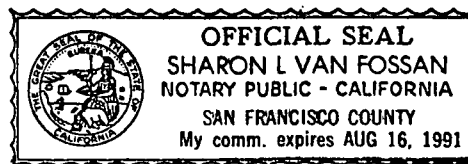
Title: President

Date: June 30, 1988

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

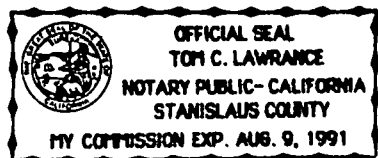
On this 8th day of July, 1988, before me personally appeared William J. Herndon to me personally known, who being by me duly sworn says that such person is President of Ferdinand and Huntingburg Railroad Company, that the foregoing Amendment No. 1 signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan
Notary Public



STATE OF CALIFORNIA)
) ss:
COUNTY OF STANISLAUS)

On this thirtieth day of June, 1988, before me personally appeared James L. Beard, to me personally known, who being by me duly sworn says that such person is President of Modesto Empire and Traction Company, that the foregoing Amendment No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Tom C. Lawrance
Notary Public

EXHIBIT A
RBL Boxcars

Running Repairs

Angle Cocks
Air Hose
Train Line
Operating Levers and
Brackets
Sill Steps
Grab Irons
Brake Shoes
Brake Shoe Keys
Brake Connecting Pin
Brake Head Wear Plates
Air Brakes
Hand Brakes
Brake Beams and Levers
Truck Springs
Door Hardware
(Not Replacement)

Running Repairs Continued

Wheels
Yokes
Knuckles/Pins
Slack Adjuster
Couplers
Draft Gears
Coupler Carriers
Center Plates
(Not Replacement)
Cotter Keys
Roller Bearing Adapters
Air Hose Supports
Load Divider Repairs
(Not Replacement)

L E A S E

AGREEMENT made and entered into this 6th day of June, 1980, between

LOUISVILLE, NEW ALBANY AND CORYDON RAILROAD COMPANY
an Indiana corporation (hereinafter called "LNAC")

and

MODESTO EMPIRE AND TRACTION COMPANY
a California corporation (hereinafter called "Lessee")

RECITALS

Lessee desires to lease from LNAC as Lessor certain railroad cars, hereinafter specifically designated or to be specifically designated, all upon the rentals, terms and conditions as set forth in this Lease.

AGREEMENT

It is agreed:

1. Lease of Cars. LNAC agrees to lease to Lessee and Lessee agrees to and does hereby lease from LNAC that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 of this Lease and as is set forth in Schedules which may from time to time be added to this Lease. The Cars covered by this Lease are those which shall be delivered to and accepted by or on behalf of Lessee pursuant to the terms hereof. This Lease shall become effective with respect to any Car as of the date of its delivery and acceptance hereunder and shall continue with respect to such Car until the end of the term provided in the Schedule covering such Car unless sooner terminated as hereinafter provided. LNAC shall deliver Cars f.o.t. at the delivery point specified in the Schedule covering such Cars.
2. Rental. When Average Car Usage is equal in any calendar quarter, the rental per Car

per day shall be all payments including but not limited to mileage charges, straight car hire and incentive car hire (if any) payable to LNAC on account of such Car.

In the event Average Car Usage

in any calendar quarter, LNAC shall receive as rental an amount equal to the total of the payments described in the previous sentence for Average Car Usage

Lessee shall be entitled to any excess payments. LNAC will within sixty (60) days after the end of each calendar quarter during the term hereof compute the Average Car Usage for such quarter and the amount so determined to be due to Lessee shall be promptly paid. Rental on each Car shall accrue from and after the date of delivery and acceptance of each Car. In the event that Average Car

during any calendar quarter and the mileage for the Cars during one or more calendar months of that calendar quarter miles, then the mileage component of the payments referred to above

mile
month.

3. Acceptance of Cars. Within three (3) days after LNAC shall give Lessee notice that some or all Cars covered by a Schedule are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point of delivery and accept or reject them as being or failing to be in compliance with the terms hereof. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall be conclusively deemed delivered to and accepted by Lessee.
4. Records. LNAC shall keep records of and monitor the use and movements of all Cars and shall make available to Lessee all information and copies of all records and reports, pertaining to the Cars received by LNAC or available to it. Lessee shall have the right at any time and from time to time to audit and verify any such information, records and reports and other data pertinent hereto and LNAC shall cooperate with and assist Lessee in

any such audit or verification. Lessee will at LNAC's expense file such applications for relief from any Interchange Rules as LNAC may direct to increase revenues of the Cars and will at LNAC's expense take all appropriate action to record and register the Cars as LNAC may request. In addition, if Lessee knows of the initial loading of any of the Cars, Lessee shall promptly thereafter notify LNAC of the date, handling railroad and destination of such initial loading.

5. Use - Lettering. Lessee shall use the Cars in a careful and prudent manner in compliance with all Interchange Rules and solely for the uses for which they were designed. From and after the delivery of a Car to Lessee, so long as Lessee shall not be in default hereunder, Lessee shall be entitled to the use of the Car for the full term of this Lease, but solely within the continental limits of the United States of America. Except for the lettering to be placed on the Cars by LNAC prior to delivery indicating the interests of Lessee, LNAC and any assignee or mortgagee of LNAC as permitted in Paragraph 11 hereof, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of LNAC. Lessee shall give preference and shall load the Cars prior to loading similar railroad cars leased from other parties subsequent to the date of this Lease or purchased by Lessee subsequent to the date of this Lease or interchanged with other railroads, provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request to shippers on its railroad tracks, and, provided further, Lessee shall not have to provide the Cars priority at the expense of unreasonably disrupting Lessee's normal operations.
6. Repair Work. Except as otherwise provided herein, LNAC shall at its sole cost and expense perform all Repair Work or authorize or cause same to be done. Lessee shall at its sole cost and expense perform or cause to be performed all Repair Work required by reason of the negligence of Lessee or

an affiliate of Lessee (excluding nonaffiliated carrying lines). LNAC shall have a duty to perform promptly Repair Work for which it is responsible, but such obligation shall not commence until LNAC is informed of the need for such Repair Work. LNAC may require Lessee to return Cars, at the sole expense of whichever party hereto shall be responsible under this Section 6 for performing, authorizing or causing to be done such Repair Work or maintenance, for preventive maintenance or Repair Work and may withdraw from this Lease any Cars which it in its sole discretion deems uneconomical for Repair Work of any kind.

7. Casualty Cars. LNAC shall bear the risk of any Car which is lost, stolen, destroyed or damaged beyond economical repair ("Casualty Car") other than on Lessee's lines. Lessee shall bear the risk of and be responsible for any Car which is lost, stolen, destroyed or damaged beyond economical repair on its lines and shall, within thirty (30) days after the occurrence of any such event, pay to LNAC the amount provided in the Interchange Rules to be paid for such Casualty Car. This Lease shall terminate as to any Casualty Car on the date on which the casualty occurred. All payments for Repair Work or in connection with the loss of any Casualty Car due from third parties shall be assigned to and belong to the party bearing the responsibility therefor under Section 6 or the risk thereof under this Section 7. Each party shall cooperate with the other in the prosecution and collection of all claims for the aforementioned payments.
8. Indemnity. LNAC will defend, indemnify and hold Lessee harmless from and against (1) any and all damage, loss, claim, deficiency or expense of any kind, including attorney's fees, based upon loss or damage to the Cars, unless occurring while Lessee has physical possession of such Cars, (2) any claim by any third party that the consummation of the transactions contemplated hereby violates the rights of any person or is otherwise contrary to law, except insofar as and to the extent that any failure by Lessee to comply with and carry out the terms of this

Lease, contributes materially to such damage, loss, claim, deficiency or expense, and (3) any other type of damage, loss, claim, deficiency or expense which may be asserted against Lessee with respect to the Cars (unless occurring through the fault of Lessee), including without limitation claims with respect to or related to the construction, purchase, delivery to Lessee's railroad line, ownership, leasing, return, use, maintenance, repair, replacement, operation or condition (whether defects, if any, are latent or are discoverable by LNAC or Lessee) of the Cars.

Lessee will defend, indemnify and hold LNAC harmless from and against (1) any and all damage, loss, claim, deficiency or expense of any kind, including attorney's fees, based upon loss or damage to the Cars occurring while Lessee has physical possession of such Cars, (2) any claim by any third party that the consummation of the transactions contemplated hereby violates the rights of any person or is otherwise contrary to law insofar as and to the extent that any failure by Lessee to comply with and carry out the terms of this Lease contributes materially to such damage, loss, claim, deficiency or expense, and (3) any other type of damage, loss, claim, deficiency or expense which may be asserted against LNAC with respect to the Cars and occurring through the fault of Lessee.

In the event any action shall be commenced or claim asserted against either party, said party (the "Named Party") shall give notice of such action or claim to the other party (the "Notified Party") promptly after receipt of written notice of such action or claim. Said Notified Party shall be entitled to participate in, and, to the extent it shall wish, to direct the defense against any such claim or in any such action (in a manner reasonably satisfactory to the Named Party) at its own expense. The Named Party shall have the right to employ its own counsel in any case, but the fees and expenses of such counsel shall be at its own expense unless the employment of such counsel shall have been authorized by the Notified Party in connection with the defense of such action

or claim, or unless the Notified Party shall not have employed counsel to have charge of the defense of the action or claims in either of which events such fees and expenses shall be borne by the Notified Party.

9. Taxes. LNAC shall pay all property taxes assessed or levied against the Cars. LNAC shall pay all taxes based upon the earnings or rental of cars. LNAC will file all property or ad valorem tax returns. LNAC and Lessee agree that, as between themselves, LNAC shall be entitled to claim the benefits of any available Investment Tax Credit for Federal Income tax purposes.
10. Termination. This Lease shall terminate upon expiration of its term, at election of either party hereto by reason of the default or breach of the other party in the terms hereof, or upon the election of LNAC as hereinafter provided. In the event of a default or breach by either party, the other party may elect to terminate this Lease with respect to all or less than all of the Cars. In the event that (i) daily Car Usage for all Cars or any group of Cars in any calendar quarter is less than _____ or (ii) the rental payable to LNAC during such quarter averages less than _____ per Car per day, then LNAC may at its option upon thirty (30) days notice to Lessee terminate this Lease in its entirety, or terminate the Lease as to any or all of the Cars subject to this Lease or any Schedule hereto. Lessee shall at the termination of the Lease with respect to any Cars return such Cars to LNAC in the same condition (except as to Casualty Cars) in which the Cars were furnished and maintained by LNAC during the term hereof, ordinary wear and tear excepted. Upon the termination of this Lease with respect to any or all Cars, Lessee may return the Cars at the final unloading point, provided however, that Lessee shall use every best effort to load the Cars to a point as near as possible to a point or points designated by LNAC not later than thirty (30) days prior to the termination of the term hereof. If requested by LNAC, Lessee shall provide free storage for a period of up to thirty (30) days

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for Cars as to which the Lease is terminated, provided that risk of loss during such storage shall be LNAC's. This Lease may be terminated as to all Cars or as to any group of Cars covered by a Schedule without termination of the Lease as to Cars covered by any other Schedule. From and after termination of this Lease with respect to any Car and until its return to LNAC, all amounts earned by such Car shall be paid to LNAC as additional rental for use of the Cars during the term hereof and LNAC shall pay all costs and expenses on account of transportation or movement of the Cars. The rights of LNAC hereunder shall be LNAC's only remedy in the event Car Usage or rentals are less than that desired by LNAC.

11. Sublease and Assignment. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

- (a) Lessee shall have no right to assign this Lease or sublease or loan any of the Cars without the written consent of LNAC.
- (b) All rights of LNAC hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part and LNAC agrees to give notice to Lessee within thirty (30) days of such assignment, pledge, mortgage, transfer or other disposition. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust covering the cars heretofore or hereafter created by LNAC. If LNAC shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment, transfer or other disposal by LNAC shall not serve to relieve such party of any liability or undertaking

hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

12. Default. If Lessee or LNAC shall fail to make any payment required hereunder within five (5) days after same shall have become due or shall breach any representation or warranty contained herein or shall default or fail for a period of ten (10) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee or LNAC under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or LNAC or their property, or Lessee or LNAC shall make a general assignment for the benefit of creditors, then and in any of said events LNAC or Lessee, as the case may be, may in addition to all other rights and remedies provided in law of equity, upon written notice to such effect, terminate this Lease in its entirety or with respect to any group of Cars with respect to which said default has occurred and thereafter recover any and all damages sustained by reason of Lessee's or LNAC's default. The obligation to pay rental then or thereafter due or any other sum or sums due and unpaid or any damages suffered by reason of Lessee's or LNAC's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

13. Definitions. For all purposes of this Lease the following terms shall have the following meaning:

"Repair Work" - all repairs, maintenance, modifications, additions or replacements required to keep Cars in good working order and condition and in compliance with all Interchange Rules.

"Interchange Rules" - all codes, rules, decisions, interpretations, laws and orders governing hire, use, condition,

repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time during the term of this Lease by the Association of American Railroads and any other organization, agency or governmental authority, such as but not limited to the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, decisions, interpretations, laws or orders.

"Car Usage" - a percentage equal to the quotient obtained by dividing the aggregate number of hours in a calendar quarter (or other applicable time period) in which straight car hire is earned on a Car commencing with its date of delivery, by the aggregate number of hours in such quarter (or other applicable time period) in which the Car is under lease to Lessee commencing with its date of delivery.

"Average Car Usage" - a percentage equal to the quotient obtained by dividing the sum of all Car Usage for all Cars for which straight car hire is earned for the applicable quarter (or other applicable time period) by the number of such Cars.

14. Representations and Warranty. Lessee and LNAC respectively covenant, warrant, and represent that all of the following matters shall be true and correct at all times that any Car is subject to this Lease:

- (a) Each party is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power, authority and is duly authorized and qualified to do business wherever it transacts business and such qualification is required, and has corporate power to and has taken all corporate action

necessary to enter into this Lease and carry out its obligations hereunder;

- (b) This Lease has been duly executed on behalf of each party and constitutes the legal, valid and binding obligation of the respective parties enforceable in accordance with its terms.
- (c) No governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of either party in connection with this Lease or any action contemplated on its part hereunder, nor will the execution or performance of this Lease violate any law, judgment order or regulation, or any indenture or agreement binding upon either party; and
- (d) Neither party nor their respective counsel know of any requirements for recording, filing or depositing this Lease other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of LNAC or its assignee or mortgagee in United States of America.
- (e) LNAC warrants that Cars delivered to Lessee pursuant to this Lease shall be in good, safe and working order and condition, and shall comply with all applicable Interchange Rules at the time such Cars are delivered to Lessee. By this warranty, LNAC is in no way relieved of any warranties that may be implied by law.

15. Miscellaneous.

- (a) This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns to the extent permitted herein.
- (b) Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States

mail, registered or certified, postage prepaid, addressed to: -

LNAC at: East Tower
2550 Golf Road
Rolling Meadows, Illinois 60008

Lessee at: 530 Eleventh Street
Modesto, California 95353

or such other address as either party may from time to time designate by such notice in writing to the other.

- (c) Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect LNAC's title, which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease and shall promptly discharge any such lien, encumbrance or legal process. Lessee shall take all action requested by LNAC to confirm LNAC's interest in the Cars as Lessor and that Lessee has no interest in the Cars other than as Lessee hereunder.
- (d) So long as Lessee is not in default under this Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars.
- (e) During the continuance of this Lease, LNAC shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time or times wherever the Cars may be. Lessee shall, upon request of LNAC, but no more than once every year, furnish to LNAC two (2) copies of an accurate inventory of all Cars in service.

(f) This Lease shall be construed, governed and enforced in accordance with the laws of the State of California-from time to time obtaining.

IN WITNESS WHEREOF, INAC and Lessee have duly executed this Lease as of the day and year first above written.

LOUISVILLE, NEW ALBANY & CORYDON
RAILROAD COMPANY, an Indiana
corporation

By Walter H. Harrison
____ President

ATTEST:

Lucas H. Buchanan
____ Secretary

MODESTO AND EMPIRE
TRACTION COMPANY

By H. F. Chapin
____ President

ATTEST:

James A. Beard
____ Secretary